



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Secretary for
Environmental Protection

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<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger
Governor

January 18, 2008

File No. 2189.8130 & 1210.48 (cc/lrg/ceb)

To be sent by
CERTIFIED MAIL No. 7007 2560 0001 7505 8649

Fairchild Semiconductor System 19
Schlumberger Oilfield Services
Attn.: Mr. D.J. Ferguson
225 Schlumberger Drive
Sugar Land, TX 77478

NOTICE: Mandatory Minimum Penalties (MMPs) assessed under California Water Code
Section 13385 for Fairchild Semiconductor System 19's discharge from 369 Whisman
Road, Mountain View, Santa Clara County, NPDES Permit No. CAG912003

Dear Mr. Ferguson:

Enclosed is MMP Complaint No. R2-2007-0080. The Complaint alleges that, during the period between January 1, 2006, and June 30, 2007, Fairchild Semiconductor System 19's permitted groundwater treatment discharge from 369 Whisman Road, Mountain View, had three violations of its discharge limits. In sum, these violations are subject to a \$9,000 MMP.

The Complaint describes the alleged violations in detail. As discussed below, Fairchild may be allowed to spend up to \$9,000 on a supplemental environmental project (SEP) that is acceptable to the Executive Officer. The deadline for submittal of written comments, evidence, and any waiver is **February 19, 2008, at 5 p.m.**

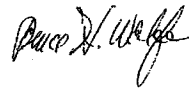
I plan to bring this matter to the Water Board at its March 11-12, 2008, meeting. Fairchild has the following options:

1. Fairchild representatives can appear before the Water Board at the meeting to contest the matter. Written comments and evidence shall be submitted by the deadline indicated above and in accordance with the process set forth in the attached Public Notice. At the meeting, the Water Board may impose an administrative civil liability in the amount proposed or for a different amount, or refer the case to the Attorney General for judicial enforcement.
2. Fairchild can waive the right to a hearing to contest the allegations contained in the Complaint by paying the civil liability in full or undertaking an acceptable SEP of up to the

amount indicated above and paying the remainder of the civil liability, all in accordance with the procedures and limitations set forth in the waiver attached to the Complaint.

If Fairchild waives its right to a hearing, it must mail and fax a copy of the signed waiver to the attention of Lou Gonzales of my staff at (510) 622-2460. If you have any questions regarding this matter, please contact Lou Gonzales at lgonzales@waterboards.ca.gov.

Sincerely,



Digitally signed
by Bruce Wolfe
Date: 2008.01.18
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Bruce H. Wolfe
Executive Officer

Enclosure: Complaint No. R2-2007-0080

Copy to: Standard R-1E List

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

Complaint No. R2-2007-0080

**Mandatory Minimum Penalty
In the Matter of
Fairchild Semiconductor System 19
369 Whisman Road, Mountain View
Santa Clara County**

Overview

This complaint assesses \$9,000 in Mandatory Minimum Penalties (MMPs) to Fairchild Semiconductor System 19 (hereafter Discharger). The complaint is based on a finding of the Discharger's violations of Waste Discharge Requirements Order No. R2-2004-0055 (NPDES No. CAG912003) for the period between January 1, 2006, and June 30, 2007.

This MMP complaint is issued pursuant to Water Code Sections 13385(h)(1-2), 13385(i) and 13385.1. For a description of how MMPs are assessed, please see General Overview of MMP Calculations, attached.

A. Permit at the time of violations

On July 21, 2004, the California Regional Water Quality Control Board, San Francisco Bay Region (Water Board) adopted Order No. R2-2004-0055 to regulate discharges of waste from facilities discharging extracted groundwater, treated to remove volatile organic carbons (VOCs). This permit is known as the VOC General Permit. The Discharger obtained coverage under the VOC General Permit on September 8, 2004.

B. Effluent Limitation

Order No. R2-2004-0055 specifies the following effluent limitation:

Parameter	Effluent Limit
vinyl chloride daily maximum	0.5 µg/L

C. Water Board Staff's Consideration of Violations

This complaint addresses three vinyl chloride violations, which were caused by breakthrough in the Discharger's treatment system. The Discharger sufficiently addressed the violations with followup monitoring and procedural changes.

The Discharger violated the vinyl chloride limit on November 17, 2006. In response, the Discharger accelerated its monitoring as required by the permit. Under the accelerated monitoring schedule, the Discharger violated the vinyl chloride limit on December 1, 2006, and again on December 4, 2006.

The Discharger determined that a breakthrough in the tertiary granular activated carbon (GAC) vessel had caused the three violations. The Discharger replaced the carbon in the

tertiary GAC vessel, to correct the immediate problem. The Discharger collected samples again on December 6, 2006, which showed a return to compliance.

To prevent future violations, the Discharger:

- Increased the frequency of GAC changes, and
- Evaluated the decrease of flow rates from low-concentration extraction wells that discharge into the treatment system, and

In sum, the minimum penalty is sufficient to address these violations because the Discharger acted appropriately to avoid reoccurrences.

D. Assessment of penalties

- **Serious Violations**

Vinyl chloride is a Group II pollutant. Serious violations for Group II pollutants are those that exceed the limitations by more than 20%. The three violations are serious, and therefore they are each subject to \$3,000 MMP, for a total of \$9,000.

- **Fourth or greater within running 180-day period**

MMPs also apply to violations that are the fourth or greater consecutive violation within a running 180-day period. The violations in this Complaint do not fall into this category.

- **Suspended MMP Amount**

Instead of paying the full penalty amount to the State Water Pollution Cleanup and Abatement Account, the Discharger may spend an amount of up to \$9,000 on a supplemental environmental project (SEP) acceptable to the Water Board. Any such amount expended to satisfactorily complete an SEP will be permanently suspended.

THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer proposes that the Discharger be assessed MMPs in the total amount of \$9,000.
2. The Water Board will hold a hearing on this Complaint on March 11-12, 2008, unless the Discharger waives the right to a hearing by signing the included waiver and checks the appropriate box. By doing so, the Discharger agrees to:
 - a) Pay the full penalty as stated above within 30 days after the signed waiver becomes effective, or
 - b) Propose an SEP in an amount up to \$9,000. Pay the balance of the penalty within 30 days after the signed waiver becomes effective. The sum of the SEP amount and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall equal the full penalty as stated above.
3. If the Discharger chooses to propose an SEP, it must submit a preliminary proposal by the close of the public comment period, as stated in the attached public notice, to the Executive

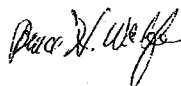
Officer for conceptual approval. Any SEP proposal shall also conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and the attached Standard Criteria and Reporting Requirement for Supplemental Environmental Project. If the proposed SEP is acceptable to the Executive Officer, the Discharger has 15 days, working with Water Board staff, to finish the proposal and establish SEP milestones. The final SEP proposal and milestones will then be posted for public comment and will be considered by the Water Board at its next scheduled hearing.

If the proposed SEP is not acceptable to the Executive Director, the Discharger has 30 days to make a payment for the suspended portion of the penalty. All payments, including any money not used for the SEP, must be payable to the State Water Pollution Cleanup and Abatement Account. Regular reports on the SEP implementation shall be provided to the Executive Officer according to the milestone schedule set forth in the final SEP proposal. The completion report for the SEP shall be submitted to the Executive Officer within 60 days of project completion.

4. The signed waiver will become effective on the day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.
5. If a hearing is held, the Water Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the matter to the Attorney General to have a Superior Court consider imposition of a penalty.

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by Bruce Wolfe

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Bruce H. Wolfe
Executive Officer

January 18, 2008

Attachments: Table 1, Violations
Waiver
Standard Criteria and Reporting Requirement for Supplemental Environmental
Project
General Overview of MMP Calculations

Table 1 - VIOLATIONS

Item	Date of Violation	Effluent Limitation Described	Effluent Limit	Reported Value	Type of Violations ¹	Penalty	Start of 180 Days ²
1	11/17/2006	Vinyl chloride effluent daily maximum (ug/L)	0.5	0.8	C1, S	\$3,000	05/22/2006
2	12/01/2006	Vinyl chloride effluent daily maximum (ug/L)	0.5	1.1	C2, S	\$3,000	05/08/2006
3	12/04/2006	Vinyl chloride effluent daily maximum (ug/L)	0.5	1.3	C3, S	\$3,000	05/11/2006
	TOTAL					\$9,000	

¹ C = Count - The number that follows represents the number of violations the Discharger has had in the past 180 days, including this violation. C4 or higher means that a penalty under Water Code Section 13385(i) applies.

S = Serious, which means that a penalty under Water Code Section 13385(h) applies.

² This column documents the start date for counting violations that have occurred within the past 180 days, for the purpose of determining whether a penalty under Water Code Section 13385(i) applies.

WAIVER

If you waive your right to a hearing, the matter will be included on the agenda of a Water Board meeting but there will be no hearing on the matter, unless a) the Water Board staff receives significant public comment during the comment period, or b) the Water Board determines it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Water Board holds a hearing under either of the above circumstances, you will have a right to testify at the hearing notwithstanding your waiver. Your waiver is due no later than February 19, 2008.

- ☐ Waiver of the right to a hearing and agreement to make payment in full.
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in Complaint No. R2-2007-0080 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the Water Board meeting for which this matter is placed on the agenda. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability.
- ☐ Waiver of right to a hearing and agree to make payment and undertake an SEP.
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in Complaint No. R2-2007-0080, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$9,000 and paying the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the Water Board meeting for which this matter is placed on the agenda. The SEP proposal shall be submitted no later than February 19, 2008. I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Executive Officer. If the SEP proposal is not acceptable to the Executive Officer, I agree to pay the suspended penalty amount within 30 days of the date of the letter from the Executive Officer rejecting the proposed/revised SEP. I also understand that I am giving up my right to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability. I further agree to satisfactorily complete the approved SEP within a time schedule approved by the Water Board at its next regularly-scheduled hearing. I understand failure to adequately complete the approved SEP will require immediate payment of the suspended liability to the CAA.

Name (print)

Signature

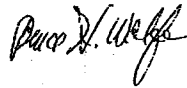
Date

Title/Organization

amount indicated above and paying the remainder of the civil liability, all in accordance with the procedures and limitations set forth in the waiver attached to the Complaint.

If Fairchild waives its right to a hearing, it must mail and fax a copy of the signed waiver to the attention of Lou Gonzales of my staff at (510) 622-2460. If you have any questions regarding this matter, please contact Lou Gonzales at lgonzales@waterboards.ca.gov.

Sincerely,



Bruce H. Wolfe
Executive Officer

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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION
JANUARY 2004**

**STANDARD CRITERIA AND REPORTING REQUIREMENT
FOR
SUPPLEMENTAL ENVIRONMENTAL PROJECT**

A. BASIS AND PURPOSE

The San Francisco Bay Regional Water Quality Control Board (Water Board) accepts and encourages Supplemental Environmental Projects (SEP) in lieu of a portion of the ACL imposed on Dischargers in the Bay Area.

The Water Board does not select projects for SEP; rather, the Discharger identifies a project it would like to fund and then obtains approval from the Water Board's Executive Officer. The Water Board facilitates the process by maintaining a list of possible projects, which is made available to Dischargers interested in pursuing the SEP option. This list is available on the Water Board web site:

<http://www.waterboards.ca.gov/sanfranciscobay/>

Dischargers are not required to select a project from this list. Dischargers may contact local governments or public interest groups for potential projects in their area, or develop projects of their own.

B. GENERAL SEP QUALIFICATION CRITERIA

Only liabilities of \$9,000 and over may be allowed to participate in the SEP Program. All SEPs approved by the Water Board must satisfy the following general criteria:

- (a) An SEP shall only consist of measures that go above and beyond all legal obligations of the Discharger (including those from other agencies). For example, wastewater pump stations should have appropriate reliability features to minimize the occurrence of wastewater spills in that particular collection system. The installation of these reliability features following a pump station spill would not qualify as an SEP.
- (b) The SEP should benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State. SEPs in the following categories have received approval from the Water Board's Executive Officer:
 - Pollution prevention. These are projects designed to reduce the amount of pollutants being discharged to either sewer systems or to storm drains.

Examples include improved industrial processes that reduce production of pollutants or improved spill prevention programs.

- Pollution reduction. These are projects that reduce the amounts of pollution being discharged to the environment from treatment facilities. An example is a program to recycle treated wastewaters.
- Environmental restoration. These projects either restore or create natural environments. Typical examples are wetland restoration or planting of stream bank vegetation.
- Environmental education. These projects involve funding environmental education programs in schools (or for teachers) or for the general public.

Further, an SEP should be located near the Discharger, in the same local watershed, unless the project is of region-wide importance.

C. APPROVAL PROCESS

The following information shall be submitted to the Executive Officer for approval of a SEP:

1. Name of the organization and contact person, with phone number.
2. Name and location of the project, including watershed (creek, river, bay) where it is located.
3. A detailed description of the proposed project, including proposed activities, time schedules, success criteria, other parties involved, monitoring program where applicable, and any other pertinent information.
4. General cost of the project.
5. Outline milestones and expected completion date.

To be considered, SEP proposal must be submitted along with waivers of hearings. If the SEP proposal is acceptable to the Executive Officer, the SEP proposal will be re-noticed and heard by the Water Board at its next regularly-scheduled hearing. The proposal will not become effective until after the final proposal is accepted by the Water Board.

D. REPORTING REQUIREMENT

On January 15 and July 15 of each year, progress reports shall be filed for the SEPs with expected completion date beyond 240 days after the issuance of the corresponding complaint.

E. FINAL NOTIFICATION

No later than 60 days after completion of the approved SEP, a final notification shall be filed. The final notification shall include the following information:

- Outline completed tasks and goals;
- Summary of all expenses with proof of payment; and
- Overall evaluation of the SEP.

F. THIRD PARTY PROJECT OVERSIGHT

For all SEPs, the Water Board requires there to be third party oversight of the project¹. The Water Board has made arrangements with the Association of Bay Area Governments (ABAG) to provide this oversight. Six per cent of the SEP funds shall be directed to ABAG for oversight services (the remaining 94% of funds go directly to the SEP). Billing information for ABAG will be provided to the Discharger following the Water Board's approval of the final SEP proposal.

¹ Third-party oversight consists of review of SEP deliverables to ensure that the required progress is being made. It also includes maintenance of records in the Water Board's database. Third-party oversight does not refer to any activities the Discharger or its representatives undertake towards completion of the SEP project.

General Overview of Mandatory Minimum Penalty (MMP) Calculations

The Water Board is required by State law to assess MMPs for certain types of permit violations from point-source facilities. These complaints are issued by the Water Board Executive Officer, and the MMPs are finalized in a public hearing before the Water Board, unless the Discharger decides to waive their right to the hearing. This is an overview of the general process for determining which violations are subject to MMPs, the amount of penalty the complaint will assess, and the portion of the penalty the Discharger may apply towards an environmental project. This procedure is the same for all facilities to which the MMP laws apply.

- I. State law requires a \$3,000 minimum penalty for all serious violations, and requires a \$3,000 penalty for any sort of violation, if it is the 4th or greater violation within a running 6-month period.**

Even though a specific violation may fit into both of the above categories, under the MMP laws, any one violation may only be assessed \$3,000.

- A. State law requires a penalty for serious violations.**

The Water Board must assess an MMP of \$3,000 for each serious violation, per Water Code Section 13385(h)(1). A "serious violation" is defined as any waste discharge of a Group I pollutant that exceeds the effluent limitation contained in the applicable waste discharge requirements by 40 percent or more, or any waste discharge of a Group II pollutant that exceeds the effluent limitation by 20 percent or more, per Water Code Section 13385(h)(2). Pollutants are assigned to Group I or Group II by federal regulations, and the MMP complaint specifies to which group each violation belongs. The full lists of Group I and Group II violations are defined in Section 123.45 of Title 40 of the Code of Federal Regulations. Additionally, the late submittal (by 30 days or more) of monitoring reports is also considered a serious violation, per Water Code Section 13385.1. Each full 30-day increment a report is late counts as a violation.

- B. State law requires a penalty for 4th or higher violation within last six months.**

The Water Board must assess an MMP of \$3,000 for each violation, in a running six-month period, per Water Code Section 13385(i), if the Discharger does any of the following **four or more times**:

1. Violates a waste discharge requirement effluent limitation.
2. Fails to file a report pursuant to Section 13260.
3. Files an incomplete report pursuant to Section 13260.
4. Violates a toxicity discharge limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

The first three violations (meeting any of 1-4 above) occurring within a six month period do not trigger the \$3,000 penalty. Also, the running six-month period is counted backwards from each individual violation considered. For example, to determine whether a violation that occurred on August 1st was subject to a penalty, you would count how many other violations had occurred

since February 1st of the same year. If there had been at least three other violations in that period, the August 1st violation would be subject to a \$3,000 penalty.

C. State law limits the amount of the penalty that may be applied toward an environmental project (or to multiple projects).

If the Water Board agrees, the Discharger may choose to direct a portion of the penalty amount to fund a supplemental environmental project (SEP) in accordance with the enforcement policy of the State Water Resources Control Board, per Water Code Section 13385(l). The Discharger may undertake an SEP up to the full amount of the penalty for liabilities less than or equal to \$15,000. If the penalty amount exceeds \$15,000, the maximum penalty amount that may be expended on an SEP may not exceed \$15,000 plus 50 percent of the penalty amount that exceeds \$15,000.

D. A supplemental environmental project (SEP) must be within certain categories.

If the Discharger chooses to propose an SEP, the proposed SEP shall be in the following categories:

1. Pollution prevention
2. Pollution reduction
3. Environmental clean-up or restoration
4. Environmental education